

<div>CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</div> <div>STAFF REPORT</div>	Hearing Date/Agenda Number P.C. 07/24/02 Item: 4.e.
	File Number CP01-08-063
	Application Type Conditional Use Permit
	Council District 6
	Planning Area Central
	Assessor's Parcel Number(s) 261-11-005
PROJECT DESCRIPTION	
Completed by: Britta Buys	
Location: Northwest corner of Stockton Avenue and Emory Street	
Gross Acreage: 15.39 Net Acreage: 15.39 Net Density: n/a	
Existing Zoning: R-2 Existing Use: Private secondary school	
Proposed Zoning: No Change Proposed Use: No Change	
GENERAL PLAN	
Completed by: BB	
Land Use/Transportation Diagram Designation Public/Quasi Public	Project Conformance: [x] Yes [] No [] See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING	
Completed by: BB	
North: Commercial, Industrial and Residential	LI Light Industrial, HI Heavy Industrial and A-Agriculture
East: Caltrain tracks and Industrial	LI Light Industrial and HI Heavy Industrial
South: Commercial and Residential	R-2 Residence and CP Commercial Pedestrian
West: Residential	R-1-8 Residence, R-2 Residence and CO Commercial Office
ENVIRONMENTAL STATUS	
Completed by: BB	
[] Environmental Impact Report found complete [] Negative Declaration circulated on [] Negative Declaration adopted on	[x] Exempt [] Environmental Review Incomplete
FILE HISTORY	
Completed by: BB	
Annexation Title: College Park / Burbank Sunol	Date: December 8, 1925
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION	
[] Approval [x] Approval with Conditions [] Denial [] Uphold Director's Decision	Date: _____ Approved by: _____ [x] Action [] Recommendation
APPLICANT / OWNER / DEVELOPER	
Bellarmine College Preparatory Attn. Reverend William Muller 850 Elm Street San Jose, CA 95126	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: BB

Department of Public Works

See attached Memorandum.

Other Departments and Agencies

See attached memoranda from the Fire Department, Department of Transportation and the City Attorney.

GENERAL CORRESPONDENCE

Letter from Bellarmine College Preparatory dated May 15, 2002; referral to City Attorney from Scott Soper with transcription of the 6/19/90 Council Meeting on Resolution 62363; referral to City Attorney from Scott Soper with attachment of Resolution 62363; letter from College Park Neighborhood Association to College Park residents received August 10, 2002; letter received from Scott Soper responding to 8/14/01 community meeting on Bellarmine pool lights; letter received from Scott Soper dated July 16, 2002.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

Bellarmino College Preparatory is requesting approval of a Conditional Use Permit to allow installation of six pole-mounted pool light fixtures at an existing legal non-conforming secondary school on a 15.39 gross-acre site. The school became a legal non-conforming use in February, 2001 when a new Zoning Ordinance was adopted by the City Council, which requires a Conditional Use Permit (CUP) for private secondary schools in residential zoning districts. The Zoning Ordinance also requires a CUP for the expansion and enlargement of a legal non-conforming use that would otherwise require a CUP, with expansion including, but not limited to, the intensification of the use with or without an increase in floor area. The applicant is not proposing an increase in floor area; however, staff has determined that because the addition of pool lights will allow extended use of the pool facility in the early morning and evening hours, the proposal qualifies as a minor expansion of the use under the Zoning Code.

History of the Site

A school campus was first established in the area of the present campus in 1871 for California Wesleyan College, which became College of the Pacific in 1911 (later renamed University of the Pacific). When the University of the Pacific moved to Stockton in 1925, the University of Santa Clara Preparatory moved to the site and one year later was renamed Bellarmine College Preparatory. The school has continued to operate at the site since that time.

The site was annexed to the City of San Jose in December of 1925, four years before the City's first Zoning Ordinance was adopted in 1929. Since relocating to the subject site, Bellarmine has expanded and improved its site a number of times. Recent approvals include Site Development Permits for the construction of various facilities including a soccer/baseball field on the northerly side of Hedding (File No. H97-03-020), a chapel/liturgical center (File No. H98-07-060), a parking lot on Emory Street (File No. H99-07-060) and a Conditional Use Permit for the addition of an off-site parking lot (File No. CP99-01-001).

Vacation of Elm Street

In 1984, Bellarmine applied for the vacation of a portion of Elm Street that separated several buildings and a parking lot at the southwest end of the campus from the main facility. School representatives expressed concern for student safety when crossing Elm Street. Residents of the College Park area opposed the closure citing concerns with ongoing parking and circulation issues in the neighborhood. The closure was not approved at that time.

School representatives applied again for the vacation of Elm Street in 1990, at which time the City Council voted to approve the closure of Elm between University Avenue and West Hedding Street. The June 26, 1990 adoption of Resolution 62363 to vacate Elm was conditioned to include recommendations made by the Director of Traffic Operations and execution by Bellarmine of an Agreement with the City. The Agreement required the school to implement the following:

1. Provide access off of Hedding Street to the Bellarmine parking lots north of University Avenue over the portion of Elm Street to be vacated;
2. Provide a drop-off location and any necessary improvements needed to implement the “drop-off” for Bellarmine students on Hedding Street; and
3. Complete all improvements needed to effect closure of Elm Street (such as erection of barriers and installation of gutters and surface drainage).

Resolution 62363 was recorded with the County of Santa Clara Recorder’s Office on January 20, 1993, and Elm Street between University and Hedding has been vacated. Neighbors of Bellarmine have expressed concern about the school’s conformance with this resolution; therefore, the City Attorney and the Department of Transportation were asked to analyze whether Bellarmine had fulfilled its obligations to the City. A memorandum prepared by the Department of Transportation (DOT), dated April 2, 2002, concludes that Bellarmine College Preparatory is in conformance with the Agreement between the school and the City which allowed the closure of Elm Street (see attached). The City Attorney’s memorandum, dated May 1, 2002, also concludes that the school is in conformance with the Agreement (see attached).

Site Location and Existing Uses

The Bellarmine campus is bounded by Emory, Elm and West Hedding Streets, and the Southern Pacific railroad tracks. A maintenance facility, parking spaces, and tennis courts are located on the southerly side of Emory Street. A soccer field and additional parking is located across from the main campus on the northerly side of West Hedding Street. The primary student drop-off area is located on West Hedding Street adjacent to the vacated portion of Elm Street. A secondary drop-off area is located at the southwest corner of Emory Street and Stockton Avenue. The pool for which this project is proposed is located on the northeasterly side of the campus, surrounded by various playing fields and buildings. Surrounding uses include single-family residences to the south and west, commercial offices and single-family residences to the north, and the Caltrain right-of-way and industrial uses to the east.

PUBLIC OUTREACH

Notices of the public hearing were distributed to the owners and occupants of all properties located within 500 feet of the project site. A community meeting was held on August 14, 2001 to present the proposed project to the neighborhood. Held at the Bellarmine campus, the meeting was attended by approximately 20 residents. Neighbors expressed concern regarding inadequate parking and circulation, the lack of use of the West Hedding Street student drop-off and Bellarmine's failure to comply with the City Council requirements for the vacation of Elm Street. Residents also expressed concern that installation of the proposed pool lights would allow sporting events with loud speakers and result in more vehicles on the surrounding residential streets.

Correspondence was received from Scott Soper, on behalf of the College Park Neighborhood Association, who expressed concern regarding the school's past compliance with City requirements and previous City approvals for expansion of the school's facilities. Mr. Soper asserted that Bellarmine is not in compliance with requirements for the vacation of Elm Street as specified in City Council Resolution No. 62363. Mr. Soper also indicated concern that Bellarmine is not in conformance with General Plan Urban Design Policy No. 23 which specifies that proposals to expand or intensify non-residential land uses in residential neighborhoods should include a master plan depicting planned uses in order to fully assess cumulative impacts on existing neighborhoods.

ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has found this project to be exempt from environmental review based on section 15311 of the CEQA Guidelines which addresses the construction or placement of minor structures accessory to existing facilities.

GENERAL PLAN CONFORMANCE

The project site is designated *Public/Quasi Public* on the City's San Jose 2020 General Plan Land Use/Transportation Diagram. This designation allows institutional uses, including private schools. The current proposal to add lights to the existing school's pool facility conforms to the General Plan designation. Staff has concluded that the proposed minor addition of pool lights to this existing school use does not trigger the need for the master plan process specified in Urban Design Policy No. 23.

ANALYSIS

The analysis section of this report focuses on three key issues: 1) conformance with the Zoning Code parking requirements, 2) conformance with the Outdoor Lighting Policy, and 3) land use compatibility. An additional discussion is included regarding measures that Bellarmine has proposed in response to neighborhood concerns regarding existing conditions.

Conformance with Zoning Code Parking Requirements

Zoning Code parking requirements for private schools are based on the number of students and staff members rather than on the size of the facilities. During the recent Zoning Code Update, in addition to the new Conditional Use Permit requirement for private schools, staff recommended that the City Council increase the required parking for private high schools from one parking space per seven students and one per staff, to one space per five students and one per staff. The City Council approved this change and the new requirements became effective in February of 2001. As a result, Bellarmine is now legal non-conforming for

parking. Where a use is legal non-conforming for parking, the Zoning Code requires that the number of parking spaces be brought into conformance with current standards at such time as the parking demand is intensified by 15 percent or more. Because student enrollment and staffing have not increased since February of 2001, the school is not required at this time to upgrade parking to meet current requirements. The proposed addition of pool lights does not increase the parking demand as defined by the Zoning Code and does not require any additional parking.

Staff will work with Bellarmine to ensure that any future enrollment/staffing increases conform to the Zoning Code parking requirements. For practical reasons, the school may decide to increase parking levels before it would be required by the Zoning Code. College Park area residents are currently working with the Department of Transportation to implement a permit parking program in the neighborhood. Such a program would restrict on-street parking to residents and their guests and would make it unavailable to Bellarmine students who are not residents of the neighborhood. This would eliminate a significant pool of parking currently available to Bellarmine students and provide a practical need for the school to increase on-site parking. The school is currently exploring options for providing additional parking on the campus.

Conformance with the Outdoor Lighting Policy

City Council Policy 4-3, *Outdoor Lighting on Private Developments*, promotes energy efficient outdoor lighting that provides adequate light for nighttime activities while reducing light pollution and sky glow (see attached). These provisions were designed to protect “night sky” viewing at the Mount Hamilton Lick Observatory from unnecessary light pollution. General policy requirements include the use of low-pressure sodium (LPS) lighting for outdoor activities, a ban on skyward-directed light sources, and full-shielding of light sources that produce more than 4,050 lumens. The Policy allows exceptions to the use of LPS lighting for outdoor recreation uses, provided that the lights are reviewed by Lick Observatory Staff, approved through a public hearing, fully shielded and turned off during the late night hours.

In conformance with the lighting policy, the applicant is proposing six 24-foot tall lights around the existing pool that will be fully shielded to prevent light emanating skyward. Although the applicant proposes metal halide light fixtures, the proposal meets all of the Lighting Policy exception criteria identified above. The lights illuminate an outdoor recreation facility, have been approved by Lick Observatory staff, will be the subject of a public hearing, are fully shielded and will be turned off when not in use and no later than 9:00 p.m. Staff has included a condition in the draft permit limiting the hours of operation of the lights and requiring them to be turned off when not in use. Based on this analysis, staff concludes that the proposal conforms to City Council Policy 4-3.

Land Use Compatibility

Due to the location of the pool facility and the design of the proposed light fixtures, staff does not believe that the proposed lighting will spill over onto adjacent properties. The proposed lights are mounted on standards at a maximum height of 24 feet and are fully shielded so that light is directed downward. The pool is located on the northeasterly side of the campus, largely buffered from Emory Street by the approximately 30-foot high gymnasium and the one-story Schott Academic Center. It is approximately 400 feet from the southeast corner of the pool facility to the southeast side of Emory Street, where the Engineers Union offices, Bellarmine tennis courts, and the College Park Fire Station are located. The nearest residence is located approximately 460 feet from the pool. The significant setbacks and the intervening structures will ensure that the proposed lighting will not impact adjacent uses.

Residents of the Bellarmine neighborhood have expressed concern that the proposed lights will allow additional special events and the use of amplified sound and will result in additional students congregating in the neighborhood in the early morning hours. The applicant has indicated that the primary purpose of the lights is to allow water polo meets during the fall and winter to extend past sundown so that working parents have the opportunity to attend. The pool is well buffered from the residences on Elm Street and staff believes that this together with the limitation on the use of the lights (to between 6:30 a.m. and 9 p.m.) will ensure that the proposal does not impact adjacent uses. Bellarmine staff have indicated that other sports teams already attend early morning practices at the campus. The proposed lighting would allow pool practices to begin earlier in the fall and winter than is currently feasible; however, staff does not believe that this will result in neighborhood impacts. The number of students is relatively small and adequate parking is available on the campus at that hour.

The applicant has indicated that the existing public address system at the pool is used for swim meets and not for water polo matches and has agreed not to use the system before 8 a.m. or after 7:30 p.m. Staff has included a condition to this effect in the Permit.

Additional Bellarmine Proposals

The City's ability to place requirements on this Conditional Use Permit is limited by the minor nature of the proposed expansion. This Conditional Use Permit cannot require additional parking or other campus modifications to address neighborhood concerns regarding existing conditions; however, the applicant has proposed the following measures in response to these concerns, providing an opportunity for the Commission to acknowledge these proposals in the Permit. (see attached letter from William Muller, dated May 17, 2002). Staff has incorporated the following proposals in the draft project conditions:

1. Change the school's address from Elm Street to Hedding Street in July 2003;
2. Implement new signage on Hedding at Elm Street to establish this location as the campus entrance;
3. Add explicit directions on the Bellarmine website to instruct drivers to arrive on campus via Hedding Street and to park on the campus;
4. Create a standard form/notice for the Business Office and the Events Coordinator that will provide explicit directions for arrival at and parking on the campus for all non-Bellarmino users of campus facilities by Summer 2002;
5. Review internal scheduling process to prevent overlapping of school events that would increase off-campus parking; and
6. Provide a ride-matching program to assist students in carpooling.

Father Muller also proposes in his letter to consolidate and reconfigure two existing parking lots on Hedding Street to create 35 additional spaces and to consider reconstructing the tennis courts on Emory and Laurel Streets into a parking lot to create at least 50 additional parking spaces. The letter further identifies measures that the school has previously undertaken to address parking and circulation issues. Additionally, Bellarmine has submitted a traffic and parking study prepared by Korve Engineering to document existing traffic and parking conditions in the vicinity of the school and to identify possible Traffic Demand Management (TDM) measures that could be implemented to reduce vehicle trips to the school. As indicated above, the school is proposing to incorporate one of these measures, the ride-matching program, into the current Permit. The

report provides baseline traffic and parking data and information regarding TDM management that will be useful in the context of any future school expansions.

CONCLUSION

Based on the above analysis, staff concludes that the proposed project is in conformance with both the parking requirements of the Zoning Ordinance and the *Outdoor Lighting Policy*, and that the proposed minor expansion of the pool use is compatible with surrounding uses.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of *Public/Quasi-Public* on the adopted San Jose 2020 General Plan Land Use Transportation Diagram.
2. The project site is located in the R-2 Residence Zoning District.
3. The applicant is requesting approval of a Conditional Use Permit to allow installation of six pole-mounted pool light fixtures at an existing legal non-conforming secondary school. The pool was previously installed with a separate permit.
4. The school became a legal non-conforming use in February 2001 when a new Zoning Ordinance was adopted by the City Council, which required a Conditional Use Permit (CUP) for private secondary schools in residential zoning districts.
5. The Zoning Ordinance also requires a CUP for the expansion and enlargement of a legal non-conforming use, with expansion including, but not limited to, the intensification of a use with or without an increase in floor area. The applicant is not proposing an increase in floor area; however, staff has determined that the addition of pool lights will allow extended use of the facility, and therefore qualify as a minor expansion of the use.
6. Surrounding uses include single-family residences to the south and west, commercial offices and single-family residences to the north, and the Caltrain right-of-way and industrial uses to the east.
7. This project has been found to be exempt from environmental review.
8. The proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.
9. Zoning Code parking requirements for private schools are based on the number of students and staff members rather than on the size of the facilities. During the recent Zoning Code Update, in addition to the new Conditional Use Permit requirement for private schools, the City Council increased the required parking for private high schools from one parking space per seven students and one per staff, to one space per five students and one per staff. The new requirements became effective in February of 2001. As a

result, Bellarmine is now legal non-conforming for parking. Where a use is legal non-conforming for parking, the Zoning Code requires that the number of parking spaces be brought into conformance with current standards at such time as the parking demand is intensified by 15 percent or more. Because student enrollment and staffing have not increased since February of 2001, the school is not required at this time to upgrade parking to meet current requirements. The proposed addition of pool lights does not increase the parking demand as defined by the Zoning Code and does not require any additional parking.

10. City Council Policy 4-3, *Outdoor Lighting on Private Developments*, promotes energy efficient outdoor lighting that provides adequate light for nighttime activities while reducing light pollution and sky glow (see attached). These provisions were designed to protect night sky viewing at the Mount Hamilton Lick Observatory from unnecessary light pollution. General policy requirements include the use of low-pressure sodium (LPS) lighting for outdoor activities, a ban on skyward-directed light sources, and full-shielding of light sources that produce more than 4,050 lumens. The Policy allows exceptions to the use of LPS lighting for outdoor recreation uses, provided that the lights are reviewed by Lick Observatory Staff, approved through a public hearing, fully shielded and turned off during the late night hours.
11. In conformance with the Lighting Policy, this application proposes six 24-foot tall lights around the existing pool that will be fully shielded to prevent light emanating skyward. Although the applicant proposes metal halide light fixtures, the proposal meets all of the Lighting Policy exception criteria identified above. The lights illuminate an outdoor recreation facility, have been approved by Lick Observatory staff, will be the subject of a public hearing, are fully shielded and will be turned off when not in use and no later than 9:00 p.m. A condition is included in the draft permit limiting the hours of operation of the lights and requiring them to be turned off when not in use.
12. The proposed lights are mounted on standards at a maximum height of 24 feet and are fully shielded so that light is directed downward. The pool is located on the northeasterly side of the campus, largely buffered from Emory Street by the approximately 30-foot high gymnasium and the one-story Schott Academic Center. It is approximately 400 feet from the southeast corner of the pool facility to the southeast side of Emory Street, where the Engineers Union offices, Bellarmine tennis courts, and the College Park Fire Station are located. The nearest residence is located approximately 460 feet from the pool. The significant setbacks and the intervening structures will ensure that the proposed lighting will not impact adjacent uses.
13. The proposed lighting would allow pool practices to begin earlier in the fall and winter than is currently feasible. The number of students attending these practices is relatively small and ample parking is available on the campus at that hour.
14. The applicant has agreed to include a condition in the Permit that limits use of the existing public address system to between 8 a.m. and 7:30 p.m.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

4. The proposed project is consistent with the Outdoor Lighting Policy.
5. The project is compatible with the surrounding neighborhood.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Bellarmine College Preparatory," dated July, 2001 on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
4. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. The City must abate any such nuisance immediately upon notice. The City shall abate such nuisance immediately upon notice to the applicant.
5. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
6. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
7. **Outside Storage.** No outside storage is permitted.
8. **Building Clearance for Issuing Permits.** Prior to issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* The permit file number CP 01-08-063, shall be printed on all construction plans submitted to the Building Official.

- b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San Jose Police Department.
 - c. *American Disabilities Act.* The applicant shall provide appropriate access as required by the American Disabilities Act.
 - d. *Archaeology.* Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
- 9. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San Jose municipal Code on the site must be used and stored in full compliance with the City's Hazardous Materials Ordinance and the Hazardous Materials Management Plan for the site approved by the San Jose Fire Prevention Bureau.
 - 10. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, wall and fence surfaces within 48 hours of defacement.
 - 11. **Pool Lighting.** Use of the pool lights shall be limited to the hours of 6:30 a.m. to 9 p.m. year round. Pool lights shall be turned off when not in use.
 - 12. **Amplified Sound.** The applicant has agreed to limit use of the existing public address system at the pool to between the hours of 8 a.m. and 7:30 p.m.
 - 13. **Address Change.** The applicant has offered to change the school address from Elm Street to West Hedding Street by July 1, 2003.
 - 14. **Future Expansion of Students and Staff.** The school currently has an enrollment of 1,415 students and a staff of 149. Any expansion in student and/or staff population will require an analysis of parking requirements and a determination regarding the need for additional permitting in conformance with Title 20 of the San Jose Municipal Code.
 - 15. **Signs.** The applicant has offered to establish a monument or gateway sign in conformance with Title 19, Sign Ordinance at the Hedding Street entrance to the site. No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
 - 16. **Ride Matching Program.** The applicant has offered to implement a ride-matching program to assist students who live in the same geographic area to car pool.

17. **Standard Directions.** The applicant has offered to implement a standard form/notice for the Business Office and the Events Coordinator providing explicit directions for arrival at and parking on the campus for all non-Bellarmino users of campus facilities.
18. **Event Scheduling.** The applicant has offered to review the school's internal scheduling process to prevent overlapping of school events that would increase off-campus parking.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.